

James E. Day, James Day and Travis Day d/b/a PRO-TEC Automatic Sprinklers and Road Sprinkler Fitters Local Union No. 689, U.A., AFL-CIO. Cases 33-CA-9614 and 33-CA-9662

May 31, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On April 30, 1992, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering James E. Day, James Day and Travis Day d/b/a PRO-TEC Automatic Sprinklers to make whole employees Richard Bogan, Richard Pheris Jr., and Arthur Smith for any loss of earnings or benefits resulting from their discharges in violation of the National Labor Relations Act. On August 18, 1993, the United States Court of Appeals for the Seventh Circuit enforced the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on February 24, 1994, the Regional Director for Region 33 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations.² Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.³

On April 22, 1994, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On April 29, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹ 307 NLRB No. 70. Summary Judgment decision not reported in Board volume.

² The compliance specification was sent to the Respondent's business address by certified mail, return receipt requested, and by regular first-class mail. The copy which was sent certified was returned with the notation "unclaimed." However, the copy which was sent by regular first-class mail was not returned. The Respondent's failure or refusal to claim certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

³ Although the General Counsel did not send a reminder or warning of the consequences of failing to file an answer to the Respondent, we find that this does not warrant denying the General Counsel's Motion for Summary Judgment. See *M. Jacobs & Associates*, 312 NLRB No. 13 fn. 1 (Sept. 10, 1993) (Summary Judgment decision not reported in Board volume); and *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause being shown for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the discriminatees, plus interest accrued on those amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, James E. Day, James Day and Travis Day d/b/a PRO-TEC Automatic Sprinklers, Longview, Illinois, its officers, agents, successors, and assigns, shall make whole employees Richard Bogan, Richard Pheris Jr., and Arthur Smith, by paying them the amounts as follows, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.⁴

⁴ The computations set forth are for backpay periods through March 31, 1994, and do not include amounts due and owing after March 31, 1994. Additional amounts are owed after March 31, 1994, until such time as the Respondent offers reinstatement to the discriminatees pursuant to the Orders of the Board and court.

Richard Bogan	\$24,572
Richard Pheris Jr.	29,549
Arthur Smith	27,742

Dated, Washington, D.C. May 31, 1994

James M. Stephens,	Member
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Dennis M. Devaney,	Member
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Charles I. Cohen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD